

**REMARKS/ARGUMENTS****Remarks:**

Claims 1-17 and 20-27 remain in this application. Applicant respectfully submits that no new matter has been introduced into the subject application. The amendments made to the claims specify that the user contributions are money contributions. In this regard, the present amendments made to the claims are supported throughout the specification, for example, at page 2, lines 11-12; at page 8, lines 7-9; page 12, line 1 and lines 8-9. Amendments made to the claims that relate to money funds being provided to artists when the funds reach a predefined money amount are supported throughout the specification, for example, at page 2, lines 13-14; page 4, line 14; and page 6, lines 5-7 from the bottom of page 6.

The Examiner has requested correction of claim 27 due to a typographical error. The typographical error has been corrected.

**Arguments:**

The following arguments are directed to the Office Action mailed February 17, 2004, rejecting claims 1-17 and 20-27.

A. Claims 1, 2, 7, 9 10, 13-17, 20-25 and 27 have been rejected under 35 U.S.C. 102(e) as being anticipated by Chacker (U.S. Patent No. 6,578,008). Applicant respectfully disagrees.

In sum, the Examiner alleges that Chacker reports the steps and elements of the present invention because of an “interactive investment simulation game” that is used to evaluate the demand of unsigned artists. Applicant respectfully disagrees with the rejections, and in particular, applicant respectfully disagrees that an investment simulation game which uses “imaginary money” (*see* Chacker, column 8, line 60) anticipates the present methods that use real money as the user contribution. In order to emphasize this difference, applicant has amended the claims to indicate that user contributions in the present methods are *real* money.

In Chacker, users “virtually” buy and sell stock in unsigned artists with *imaginary* money. Although one could tenuously argue that users who buy and sell stock with imaginary money are contributing their time, such users are contributing their time to the interactive investment simulation game and not to a money-fund for the benefit of an artist. In contrast, the users of the present invention are contributing real money to a fund that is for an artist, as manifested by the fact that when an artist attains a predefined money level of user contributions, the fund *itself* (minus a commission) is provided for the benefit of the artist. In Chacker, users are motivated to contribute their time to a game such that “top traders for each month or quarter receive various prizes” or for the “enjoyment and fun of the game.” (*see* Chacker, column 8, lines 64-65 and column 9, line 7). However, it is impossible that users in Chacker’s game can contribute their time or their imaginary money to a fund, such that the fund *itself* can be provided for the benefit of an artist.

The distinction between imaginary and real money creates fundamental differences between the two systems. In Chacker, the freedom of playing with imaginary money, coupled with the incentive to win prizes, can create “market-demand” data that is influenced/biased by traders who speculate which artists in the game are the most popular. In other words, in Chacker’s system, users can receive benefits based on savvy game-play alone, where the users are not necessarily making their virtual stock trades based on which artists they most enjoy. In the present invention, users contribute money to artists, not because these users can win prizes or because these users receive game-play enjoyment compensation, but because these users have the option to support the development of an artist that they enjoy. For fans who contribute to an artist that reaches a predefined level of financial (money) support, or becomes “BoomBacked™”, then the fan is eligible for certain membership privileges associated with the BoomBacked artist. These privileges directly relate to the artist that the user chose to support, such as discounts on merchandise associated with the artist, advance notice of tour dates, discounts on merchandise associated with the artist, advanced notice of tour dates, discounts on concert tickets and music, etc (*see* Application as filed, page 10, 2nd paragraph). In sum, the present invention can more accurately determine market demand because users are directly contributing real money, where the real money is the index of market demand. In Chacker, prizes are needed to provide incentives for its users to play the game, and as such, this creates a definite non-equivalence

between an index of market demand that is based on imaginary money and an index of market demand that is based on real money.

As Chacker does not disclose the element of a financial contribution that is *real* money, Chacker does not anticipate the present claims. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Thus, applicant respectfully requests reconsideration and withdrawal of this ground of rejection.

**B.** Claims 3 and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chacker (U.S. Patent No. 6,578,008) as combined with the reference “7up launches a one-of-a-kind Internet Music Program (Business Wire),” (hereafter called “7up reference”). Applicant respectfully disagrees.

The Examiner argues that although Chacker does not expressly disclose supplying users with a recognition certificate regarding artists that attain a predefined level of contributions, the 7up reference purportedly reports giving users artist-related merchandise. First, the present invention gives users a recognition certificate when artists that the users support reach a predefined amount of money contributions. Chacker does not teach or suggest a system where users can contribute *real* money. Secondly, the recognition certificate is neither a prize nor a gimmick provided as incentive for user contribution, as suggested by the Examiner. Rather, BoomBack certificates are given to users only when supported artists reach a predefined amount of money contributions. The certificates are given based on a cumulative amount of money contributions from a number of users (where the cumulative amount of money can be predefined by limiting the contribution to a fixed sum of money and/or limiting the number of contributors), and not in exchange for game-play. Neither Chacker nor 7up teach or suggest (i) real money contributions and (ii) that certificates are given to users based on a predefined amount of real money contributions. Thus, the combination of Chacker and the 7up reference does not establish a *prima facie* case of obviousness over the claimed invention because “all the limitations must be taught or suggested by the prior art.” *In re Royka*, 490 F.2d 981 (CCPA 1974). Applicant respectfully requests reconsideration and withdrawal of this ground of rejection.

C. Claims 4-6, 11, 12 and 26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chacker (U.S. 6,578,008) in view of Riffage.com. Applicant respectively disagrees.

The Examiner contends that although Chacker discloses that user contributions are virtual, Riffage.com reports non-virtual financial contributions. However, Riffage.com does not disclose money financial contributions. Riffage.com reports that users can purchase CDs, T-shirts and other merchandise, where the revenues of the sales are then split between between an artist and Riffage.com: “And the revenue breakdown between Riffage.com and its artist compares favorably to rival sites ... Riffage.com exacts a scant 15-percent cut of all sales and waives all set-up fees.” (*see* “Bands and fans rub elbows on Riffage.com”). However, the revenue generated by sales of merchandise is not a money contribution of the present invention. The present invention provides a completely different system. For example, in the present invention, users provide money contributions that may translate into discounts on artist-related merchandise *only* when the money contributions for a particular artist reach a predefined money level amount. Unlike Riffage.com, there is no guarantee that money contributions will result in discounts on merchandise for a particular artist in the present invention. Neither Riffage.com nor Chacker suggest or disclose such a system. In fact, the failure of Riffage.com (*see* “Curtain Closes for Riffage.com”) provides secondary evidence that its system would not reasonably provided an expectation of success if it was somehow merged into a system provided by Chacker.

Systems that are based on real-money and systems that are based on virtual-money are fundamentally different and provide distinct results. For example, the “Hollywood Stock Exchange<sup>®</sup>” (*see* “About HSX,” attached IDS) is a system that is equivalent to Chacker. The Hollywood Stock Exchange is a game where people can exchange virtual stock in stars, such that savvy game-play is rewarded. However, a virtual game does not provide identical results to real-money markets, it can only provide an approximation to reality: “ ‘Although no real money is changing hands, it seem[s] as if players care enough about their portfolios to make reasonably informed decisions,’ said Pennock. ‘As a result, the game markets behave in some ways like real markets, showing signs of efficiency and predictive accuracy.’ ” (*See* “The Power of Play,” ninth paragraph, in the attached IDS). The game markets, such as Chacker or the Hollywood Stock Exchange can only approach the reality of real-markets based on real money, “While for most

purposes game markets cannot replace real markets, in terms of combining information and making predictions, game markets can be similarly valuable.” (See “The Power of Play,” third paragraph). The risks and rewards of real-money systems are fundamentally different than artificial systems, and as such, artificial systems can only hope that “players care enough about their portfolios.” There is neither a motivation nor a reasonable expectation of success in combining an artificial market system (Chacker) with a non-artificial market system (Riffage.com), as the two systems provide fundamentally different results.

Thus, a virtual-system does not teach or suggest that user contributions can be *real* money such that identical results are provided between a virtual system and a real-market system like the present invention. Applicant asserts that due to the fundamental difference between a virtual system such as Chacker and a real-market system, such as Riffage.com, the combination is improper because fundamentally different systems do not provide evidence of a motivating force which would impel one skilled in the art to do what the applicant has done. *Ex parte Levengood*, 28 USPQ2d 1300, 1302 (Bd. Pat. App. & Inter. 1993). Further, as Riffage.com does not teach or suggest money financial contributions in the manner of the present invention, where in the present invention money contributions do not guarantee a return of privileges. For example, the claims state that if an artist does not attain a predefined money level of user contributions, the user is then entitled to: (a) a refund of their money contribution; (b) a redistribution of their money contribution to another artist from the pool of artists; and (c) to leave their money contribution undistributed in a non-artist account. However, this does not mean that the user is guaranteed merchandise in return for their contributions, as in Riffage.com. As such, a *prima facie* case of obviousness has not been established because all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Applicant respectfully requests reconsideration and withdrawal of this ground of rejection.

**CONCLUSION**

For all the reasons advanced above, Applicant respectfully submits that the rejections have been overcome and should be withdrawn. Consequently, issuance of a Notice of Allowance is respectfully requested.

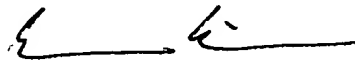
**AUTHORIZATION**

The Commissioner is hereby authorized to charge any additional fees that may be required for this Amendment, or credit any overpayment, to deposit account number 08-0219.

In the event that an extension of time is required the Commissioner is requested to grant a petition for that extension which is required to make this response timely, and is hereby authorized to charge any fee for such, to deposit account number 08-0219.

Respectfully submitted,

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